signments, the *bona fide* buyer or buyers who have agreed to buy them and the price agreed upon. This is of vital importance because the Act does not only control movements of rice and padi from one State to another, but also prohibits unlawful possession and concealment. The object of the Act is clear beyond doubt that control of rice and padi has to be strictly exercised in order to ensure not only sufficient supply to the public, but also to prevent black-marketeering. If strict control is not exercised, there is every likelihood of concealment and disappearance of such vital commodity from the open market. In the circumstances it is also pertinent to enquire what is the higher price expected by the farmers to ensure that the rice is not being sold higher than the maximum prices fixed by the authority and that it does not fall into the wrong hands. This is so because only *bona fide* dealers duly licensed by the authority under the law can deal in rice. The learned president should have considered all these surrounding facts and, if necessary, hold an enquiry to ascertain them. This is particularly so where facts which ought to be known cannot be obtained without an enquiry being held. The discretion to hold the enquiry depends on the facts and circumstances of each particular case. In the present case, I am of the opinion that such enquiry should be held.

A similar procedure has been held to be necessary by Raja Azlan Shah J. (as he then was) in *Sing Hoe Motor Co. Ltd.* v. *Public Prosecutor.*[1] That case relates to the interpretation of section 92(4) of the Road Traffic Ordinance which enacts that —

"... an order for the forfeiture of such vehicle may be made if it is proved to the satisfaction of the court that an offence against this section has been committed...."

It was held the word "may" in section 92(4) of the Ordinance vested a discretion in the court whether or not to order a forfeiture. In order to exercise such a discretion properly, the known circumstances with regard to the particular vehicle should be fully considered. That implies an inquiry as to the true character of the motor vehicle concerned, whether it is the subject of a hire-purchase agreement or otherwise.

A similar question was submitted by way of reference to the Federal Court in *Chung Khiaw Bank Ltd.* v. *Public Prosecutor.*[2] It was held, *inter alia,* that the court should hold an enquiry under section 407(ii) of the Criminal Procedure Code (Cap. 6) and at such enquiry the true legal owner of the vehicle has a right to be heard.

In the present case, although the owners are known, other relevant facts as stated above have to be ascertained before the learned president can be in a position to order confiscation or release of the rice.

In the circumstances I have no alternative but to quash the order of release and remit these cases to the learned president for the purpose of holding an enquiry under section 407 of the Criminal Procedure Code which in turn gives a discretion to the court to order disposal of any property for which any offence appears to have been committed and produced before it, during or at the conclusion of any enquiry or trial.

Order of release quashed.

SANTOKH SINGH v. KOH TUNG CHIN

[O.C.J. (Mohamed Zahir J.) December 11, 1975]
[Seremban — Civil Suit No. 170 of 1971]

Contract — Brokerage commission — Claim for — Terms of agreement regarding plaintiff's obligation, inter alia, to effect lease for a stipulated sum — Payment of brokerage commission to be made when defendant's land has been leased — Whether plaintiff can claim for brokerage commission when land leased for a lesser sum.

The plaintiff claimed against the defendant for payment of brokerage commission in the sum of $9,000. The plaintiff alleged that the defendant had agreed to pay him if he brought the parties together, namely BP Malaysia Berhad and the defendant, and after they had agreed to effect a lease of the defendant's land for $60,000. The defendant denied that he had ever given an option to the plaintiff.

Held, dismissing the plaintiff's claim with costs: (1) on the balance of probabilities the defendant's version was true and there was no privity of contract between the parties;

(2) even if the plaintiff's version were accepted at the time when the contract was made, both parties had agreed that the contract for payment of the commission of $9,000 was on the executed consideration of the plaintiff having procured the agreement of BP Malaysia Berhad that the defendant would be paid $60,000 on the lease. However, this turned out not to be the case as the defendant, a week later, had to enter into an option for a lesser amount.

Cases referred to:-

(1) *China Insurance Co. Ltd.* v. *Ngau Ah Kau* [1972] 1 M.L.J. 52.

(2) *Abdulla Ahmad* v. *Animendra Kissen* A.I.R. 1950 S.C. 15.

CIVIL SUIT.

Atma Singh Gill for the plaintiff.

N. Ramachandran for the defendant.

Mohamed Zahir J.: The plaintiff sued the defendant for payment of brokerage commission in the sum of $9,000. The plaintiff alleged that the defendant had agreed to pay him this sum on an agreement dated July 29, 1966 (Exhibit P1) signed by the parties arising from a land transaction. It was alleged by the plaintiff that he had managed to obtain a lease from BP Malaysia Berhad for the defendant's land held under Entry in the Mukim Register 35 Lot 364, Mukim of Jelei, Bahau consisting of 2 acres 1 root 00 pole out of which a fixed brokerage commission was promised to the plaintiff by the defendant.

The plaintiff further alleged that his obligation under the agreement was merely to bring the parties together, namely BP Malaysia Berhad and the defendant, and after they had agreed to effect a lease on a portion of the defendant's land for a petrol station for a consideration of $60,000 his (the plaintiff's) obligation was completed. Thereafter he was not supposed to do anything else. According to the plaintiff he came to know about the defendant's land through the defendant's brother (DW3) and after all arrangements had been agreed to lease the land to BP Malaysia Berhad he was introduced to the defendant and as a result the defendant signed the agreement (Exhibit P1), which the plaintiff termed as an option, at a coffee shop in Bahau. He further said that it was the defendant who prepared and produced Exhibit P1. The plaintiff further stated that at first the lease was negotiated for $70,000 but later was reduced to $60,000 and as a result the commission was accordingly re-

duced from $12,000 to $9,000 after some bargaining between the parties. He explained the reason for the high commission being not the usual 2% brokerage commission was that the defendant's brother had earlier requested him to sell the whole land for $10,000 per acre and since he had managed to secure a lease for a much bigger amount in respect of only a portion of the land leaving a large portion of land intact, the defendant had willingly agreed to pay such a high commission.

The defendant in his defence denied that he ever granted the option to the plaintiff and stated that the plaintiff was a nominee of one Balwant Singh, an employee of BP Malaysia Berhad and according to him, the said Balwant Singh by way of illegal gratification induced the defendant to sign the Exhibit P1 purporting to grant an option in favour of one Santokh Singh (now apparently the plaintiff). The defendant further pleaded that there was no consideration for the alleged promise to pay the commission and/or the said consideration was illegal. He further contended that the option granted to BP Malaysia Berhad in 1966 lapsed in 1968 and therefore the plaintiff would be disentitled to any commission on Exhibit P1.

The plaintiff produced no witness. He merely relied on Exhibit P1.

The defendant produced two witnesses, one Raja Ahmad Azizar, a marketing executive of BP Malaysia Berhad (DW2) and the other his brother, William Koh (DW3).

The defendant denied knowing the plaintiff at all and stated that he came to know the plaintiff only on the day of hearing of this suit. According to the defendant, Exhibit P1 was produced by Balwant Singh together with an Option Agreement between the defendant and BP Malaysia Berhad (Exhibit D11) at a Singapore hotel at Geylang, and he signed both Exhibit P1 and Exhibit D11 at Singapore. He said Exhibit P1 was prepared by Balwant Singh. He denied the presence of the plaintiff when these two documents were signed.

The marketing executive of BP Malaysia Berhad (DW2), testified that there was nothing on record about one Santokh Singh as a mediator in the transaction between the defendant and his company. His company came to know about one Santokh Singh only after the company received a letter from the plaintiff's solicitors at a later stage. He stated that if there was a mediator his company would have recognised such fact, if this fact was made known to the company. He also testified that the Option Agreement (Exhibit D11) had lapsed and there was a new option agreement entered into between the defendant and his company dated April 30, 1970, under which a sum of $48,000 was agreed to be paid by the company to the defendant for a lease for the same land for a period of 10 years. It was still an option agreement. According to him no lease has yet been registered, but a sum of $43,000 had been paid to the defendant and a petrol station had been constructed on the defendant's said land and is now in operation.

William Koh (DW3), testified that it was Balwant Singh who came to see him about the land, and he corroborated the defendant's story that Exhibits P1 and D11 were signed in Singapore. He denied meeting the plaintiff over his offer to sell the land for $10,000 per acre. He however stated that Balwant Singh paid the defendant the sum of $900 at Singapore Hotel, whereas the defendant stated it was paid in Bahau some time later.

The counsel for the plaintiff argued that by reason of sections 91 and 92 of the Evidence Ordinance, it was not open to the defendant to adduce oral evidence to contradict, vary or add to or subtract from a written agreement, and he quoted *China Insurance Co. Ltd.* v. *Ngau Ah Kau.*[1] With due respect I cannot agree with this view as in this case the defendant admitted the contents of Exhibit P1 and further that the evidence adduced by the defendant would if believed invalidate Exhibit P1 for want of failure of consideration and would therefore be admissible under section 92(a) of the Evidence Ordinance.

In my opinion, in order to lend credibility to his story, the plaintiff should have called Balwant Singh to support his story. It could not be said that Balwant Singh was hostile to him, particularly when he alleged that he negotiated with BP Malaysia Berhad through Balwant Singh. In fact, according to the plaintiff, he did not negotiate the lease direct with BP Malaysia Berhad but through Balwant Singh. The defendant in his defence also pleaded that it was Balwant Singh who negotiated with the company and not the plaintiff. The failure to call Balwant Singh by the plaintiff leaves a big gap in his evidence. The plaintiff also failed to call the other witness to Exhibit P1. He stated that that person was unknown to him and that that witness was a friend of the defendant and that there was no witness for him to Exhibit P1.

I find it rather hard to believe that the plaintiff had failed to procure a witness for himself for such a contract. The defendant stated that he also did not know the other witness and that when he and his brother signed Exhibit P1 the other half of it was left unsigned when he handed it back to Balwant Singh.

Exhibit P1 contains one fact that gives serious doubts as to the truth of the plaintiff's version. That it gives defendant's Singapore address as well as his Bahau address. If Exhibit P1 was prepared and signed in Bahau, why should it bear the defendant's Singapore address? Moreover Exhibit D11 was not attested by any solicitor but it appears that the defendant's brother (DW3) signed it on the space normally reserved for an attesting solicitor. Now, if it were signed in Kuala Lumpur where the main office of BP Malaysia Berhad was situated, then in all probability it would have been attested by the company's solicitor. It was possible therefore that D11 was signed elsewhere and in this case the only evidence was that it was signed in Singapore together with Exhibit P1.

The plaintiff's version of the story that he, through Balwant Singh, negotiated with BP Malaysia Berhad an option of lease for the land for $60,000 for the defendant was not supported by the ensuing events, because if this were to be the case how could the

plaintiff explain that the subsequent option agreement with the oil company (Exhibit D11) was for $40,000? The plaintiff should have known this if he had negotiated the lease through Balwant Singh as alleged by him. In my opinion he did not know about this until the hearing of the suit and in fact he instructed his solicitors to write to the defendant on December 5, 1969 and to the oil company on December 5, 1969, mentioning the initial rental of $60,000 (see Exhibit P4). Even his solicitor's letter dated May 11, 1970 (Exhibit D2) reiterated that the initial payment was $60,000.

In my opinion the defendant's version could on the balance of probabilities be true and I accept his story. There was therefore no privity of contract between the parties.

I believe the defence story that Exhibit P1 was produced by Balwant Singh and this accounted for his inability to type down the identity card numbers of both the plaintiff and the defendant. I cannot accept the story of the plaintiff that it was produced by the defendant with the dates already typed before signatures in anticipation that the initial rental for the land was $70.000. Ordinarily documents in the nature of Exhibit P1 were prepared by the brokers.

Even if the plaintiff's story were to be accepted as true, in my opinion his claim would also fail. According to him, the consideration of $60,000 was an executed consideration, that is liability was outstanding on the part of the defendant only and it was conditional that the commission be paid "on completion and payment for the lease of the above land by BP Malaysia Berhad". Thus at the time of entering into the contract, according to Exhibit P1, both parties had agreed that contract for payment of the commission of $9,000 was on the executed consideration of the plaintiff having procured the agreement of BP Malaysia Berhad that the plaintiff would be paid $60,000 on the lease. This turned out not to be the case. The defendant about a week later had to enter into an option for a much lesser amount of $40,000. Even this option expired after a series of renewals and a new option was entered into some years later where the defendant was to be paid a sum of $48,000.

The plaintiff's counsel argued that since the plaintiff had successfully brought the parties together he should be paid his commission nevertheless and he quoted the case of *Abdulla Ahmad* v. *Animendra Kissen.*[2] With respect in that case the appellant who was the broker was authorised by the respondent to sell a property for a sum and agreed to pay a commission if the appellant would find a buyer to purchase the property and the commission payable to be paid varied in accordance with the price to be sold subject to a minimum price. The appellant found a purchaser for the property for a higher price than the minimum price and therefore he was entitled to his commission. However the facts of this case are substantially different. The counsel for the plaintiff also argued that the plaintiff was in the position of the defendant's agent for the purpose of negotiation with the oil company. It might very well be but the fact remains that the agreement Exhibit P1 was entered into on the assumption that the plaintiff had already successfully negotiated a lease for the defendant for a sum of $60,000.

As regards the defence that the consideration was illegal, I find that the defendant had not seriously pursued this point. When the marketing officer of BP Malaysia Berhad (DW2) gave evidence he was not asked why Balwant Singh was asked to resign in 1968. It was not proved either whether it was illegal for a sales representative to accept a commission from a land owner after a successful negotiation of a lease with the company. The defendant's defence in this respect therefore fails.

Regarding the defence that the lease had not yet been completed, I am of the opinion that if the lease for which the defendant had been substantially paid is the same as the one they contracted for under Exhibit P1, then such a lease for all intents and purposes has been completed. The fees for the subdivision had been paid and a petrol station has been in operation by BP Malaysia Berhad on the land. However for reasons stated above the lease for which the parties herein contracted for has never materialized and therefore could not be said to have been completed.

The plaintiff's claim is therefore dismissed with costs.

Claim dismissed.

Solicitors: *Atma Singh Gill & Co.; N. Ramachandran & Co.*

GURPAL SINGH v. KANANAYER & ANOR.

[O.C.J. (Mohamed Zahir J.) December 11, 1975]
[Seremban — Originating Motion No. 65 of 1975]

Land Law — Enquiry held before Assistant Collector of Land Revenue — Chargee appealing against his decision dismissing application — Whether Assistant Collector has powers to hear pleadings and defences which have arisen in cases ordinarily heard by courts — National Land Code, ss. 260, 261, 340(1).

This was an appeal by the chargee against the decision of the Assistant Collector of Land Revenue who dismissed the chargee's application for an order of sale of a piece of land under section 260 of the National Land Code charged by the respondent to the chargee. The Assistant Collector considered allegations of fraud, mistake, *non est factum*, limitation, non-compliance with the Moneylenders Ordinance, the Stamp Ordinance and the Evidence Ordinance. The issue arising therefrom was whether the Assistant Collector had the powers under section 261 of the National Land Code to hear pleadings and defences which arise in cases ordinarily heard by the courts.

Held: (1) the collector has no powers to adjudicate on the pleadings which were ordinarily heard in the Courts;

(2) the powers of the Collector in the enquiry should be limited. He should not go behind the charge in view of section 340(1) of the National Land Code relating to indefeasibility of title or interest and only the High Court possesses the power to set aside any registered interest of a proprietor, chargor or lessee in any land title;

(3) the order of the Assistant Collector was set aside without prejudice to either party to take any fresh action to court.